



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Natural Resources

DIVISION OF PARKS AND OUTDOOR RECREATION
Office of History and Archaeology

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March 7, 2013

File No.: 3130-1R COE Chuitna Coal

Robert W. Jobson, Jr.
Archaeologist
U.S. Army Corps of Engineers, Alaska District
P.O. Box 6898
Elmendorf, AFB, Alaska 99506-6898

Subject: Chuitna Coal Mine Project

Dear Mr. Jobson:

The Alaska State Historic Preservation Office (AK SHPO) received your correspondence (dated January 15, 2013) on January 16, 2013. We greatly appreciate having additional time to complete our review of this most recent material per our request in an email dated February 8, 2013. Following our review of the documentation provided, we offer the following comments.

Area of Potential Effects (APE)

1. Before commenting on the proposed APE, we request that the Corps explain how this APE encompasses the geographic area within which the undertaking may directly or *indirectly* cause effects to historic properties. As presently proposed, it appears to account primarily for potential direct effects. How has the potential for indirect effects been taken into account?
2. We request an overlay figure/map that shows the Corps' proposed APE, the presently proposed boundary of the Ch'u'itnu Archaeological District (TYO-132), and if possible, the boundary for the proposed Dena'ina-Tyonek Traditional Cultural Landscape area.

Reassessment of the Ch'u'itna Archaeological District under additional National Register Criteria

1. Regarding the Corps' re-assessment of the Ch'u'itnu Archaeological District under Criterion A of the National Register of Historic Places (NRHP) in response to a request by the Native Village of Tyonek (NVT) and their representative Ms. Heather Kendall-Miller, we believe that the Corps has neglected to acknowledge that properties may be of *local significance* and still be eligible for the NRHP. Further, if the Corps believes that the larger Dena'ina-Tyonek Traditional Cultural Landscape is eligible under Criterion A and that the Ch'u'itna Archaeological District contributes to that landscape, it follows that the archaeological district is also eligible under Criterion A.
2. At present, we believe that the Corps' argument for the district's eligibility under Criterion C lacks strength. As such, we believe that the Ch'u'itna Archaeological District is eligible under Criteria A and D of the NRHP.

Dena'ina-Tyonek Traditional Cultural Landscape

1. We agree that a much larger traditional cultural landscape, consisting of place names, traditional resource areas, built environment resources, archaeological resources, and ongoing subsistence practice areas is present and encompasses the archaeological district and project area. We appreciate and applaud the Corps' efforts to preliminarily acknowledge the presence of a larger cultural landscape within the project area in response to concerns raised during consultation.
2. At this time, it is difficult for our office to concur on the eligibility of the larger Dena'ina-Tyonek Traditional Cultural Landscape without an assigned AHRS number and a formal report with an accompanying NRHP-determination of eligibility that provides substantially more research supporting the recommendation. While acknowledging its presence and potential significance is important, the Corps may decide whether additional research in order to evaluate the NRHP-eligibility of the landscape is within the scope of this undertaking.
3. Additionally, it seems appropriate that some of the analysis of the myriad components of a larger landscape may also be addressed within the documentation required by the National Environmental Policy Act (NEPA).

Additional Identification and Evaluation of Historic Properties

1. Recent and ongoing consultation amongst the Corps, the NVT, the Advisory Council on Historic Preservation (ACHP), our office, and other interested parties has resulted in the suggestion that more identification and evaluation of historic properties is needed – specifically within the archaeological district (TYO-132) – before the Corps moves forward in making a finding of effect under Section 106.
2. The NVT has specifically stated that a solid record of the values and significance of the cultural resources in the project area is warranted prior to moving forward with a finding of effect. Clearly, they do not believe that the existing documentation provides that record. Further, the ACHP has advised that it is critical to have a clear understanding of the historic properties within the APE in order to adequately assess effects in order to avoid, minimize, or if necessary, mitigate those effects.
3. The NVT has also raised concerns about potential impacts to burials and the possible presence of human remains within the project area. The January 15, 2013 letter from the Corps does not address this concern.
4. The NVT has requested that in addition to a pedestrian archaeological inventory of the conveyor belt route, additional testing of a defensible sampling of house pit clusters and associated middens for subsistence data, as well as testing between house and cache pits to identify activity areas is warranted.
5. Additionally, several parties have expressed the importance of defining and justifying the boundary of the Ch'u'itnu Archaeological District (TYO-132). The documentation provided should list contributing properties within the district. This list does not have to be exhaustive, but should consider – in addition to house pits and cache pits – other properties/features such as camps, trails, cabins, sacred/ceremonial areas, evidence of subsistence practices, and/or burial/cremation sites.

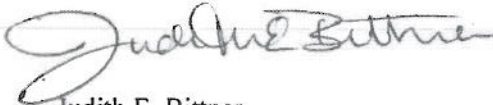
Suggestions for Moving Forward

1. While the Corps, as the lead Federal agency, can decide the best means for addressing the various concerns of the consulting parties, it has been suggested that a dedicated Working Group may be appropriate to identify deficiencies in the existing documentation, set achievable goals/outcomes, assign responsible parties, and establish timeframes for accomplishing remaining tasks. This Working Group should be focused and include a representative from the Corps, NVT, a SHPO/ACHP representative, and possibly an applicant representative. Efforts should be made to keep the number of actual working group participants low, recognizing that each participant will of course consult with their respective advisors as needed in order to inform the group.

2. The Corps, in consultation with the parties who have raised concerns about the inadequacy of the existing documentation should provide specific research questions and/or data gaps that remain. Additionally, they should provide specific recommendations on how those deficiencies can be addressed.
3. The Corps should continue to work with NVT to address the concern about impacts to burials.

Thank you for the opportunity to comment. We look forward to continued consultation on the subject project. Please contact Shina duVall at 269-8720 or shina.duvall@alaska.gov if you have any questions or if we can be of further assistance.

Sincerely,



Judith E. Bittner
State Historic Preservation Officer

JEB:sad

cc: Frank Standifer, President, Native Village of Tyonek (NVT): f.standifer@hotmail.com
Jessica Standifer, NVT: jessica_s@tyonek.net
NVT Environmental: NVT_environmental@tyonek.net
tebughna-kc@hotmail.com
Heather Kendall-Miller, NVT Counsel, NARF, kendall@narf.org
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Jamey Stoddard, EPA: Stoddard.jamey@epamail.epa.gov

SENT BY E-MAIL
DATE 2/2/02



February 20, 2013

To: Dennis J. McLerran
EPA Region 10 Administrator
US EPA Region 10
1200 Sixth Ave
Suite 900
Seattle, Washington 98101

Re: Positive Government-to-Government Relations

Dear Mr. McLerran:

As President of the Native Village of Tyonek – IRA Council (NVT), I would like to formally thank you on behalf of the entire NVT Council for respectfully engaging in meaningful consultation with the NVT – IRA Council. We are very grateful for the commitment of the EPA leadership and employees in both Region 10 and Headquarters to engage in positive and meaningful government-to-government consultation. The U.S. EPA is exemplar among federal agencies in implementing the federally mandated Executive Order 13175, which is consistently demonstrated by EPA's open communications and the ongoing advocacy on behalf of NVT.

Thank you for coming to Anchorage on November 14th, 2012 to sign a historic MOU with the NVT, for sending Mr. Rick Parkin and staff to Tyonek to meet with the NVT on August 11th, 2011, for participating in the government-to-government meeting with Administrator Jackson on October 3rd, 2012, and for sending EPA staff to travel to Anchorage in-order to participate in our first quarterly government-to-government conference call on February 4th, 2013.

We greatly appreciated the opportunity to meet on a government-to-government basis and appreciate the important work of the U.S. EPA in upholding the Clean Water and Clean Air Acts.

Regarding NVT's role as a Cooperating Agency with the Army Corps of Engineers as the lead federal agency, NVT continues to be placed at a severe disadvantage as we have not had the opportunity to review draft documents and cooperating agency comments in a timely fashion. We acknowledge and appreciate that your staff has recently advocated for the draft Water Management Plan and agency comments to be released to NVT.

In our dual roles as a Tribal Government and a Cooperating Agency we are committed to working together with all state and federal permitting agencies, as we find that when we all work together Alaskan's reach better decisions.

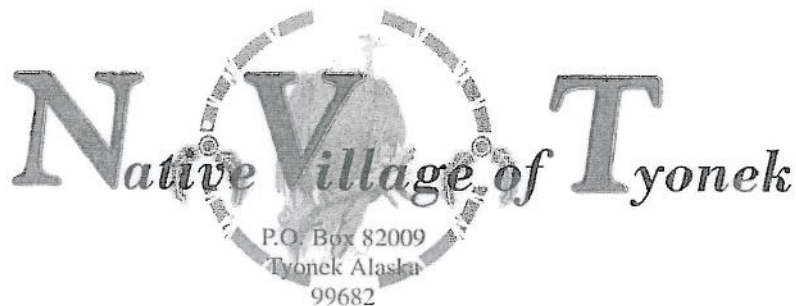
We realize that you are very busy serving the entire Region and we are grateful for your leadership and your commitment to effective government-to-government relations. Again we thank you for your service and the work of the U.S. EPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Standifer III", with a stylized flourish at the end.

President Frank Standifer III

Cc: Jodi Archibald Gillette
Joann Chase
Bicky Corman
Jim Woods
Jamey Stoddard



Resolution # 2013-03
Council of the Native Village of Tyonek
Recognizing EPA's Commitment to Tribal Consultation

WHEREAS, this tribe is an Indian chartered tribe as defined by the Indian Reorganization Act of June 18th, 1934 and the act of May, 1936, extending certain provisions of the former act to Alaska, and under its charter, constitution and by-laws, has full authority to act in the following and

WHEREAS, the Native Village of Tyonek and IRA organization is the Tribal authority for Tyonek, and is recognized in the Federal Register; and

WHEREAS, the Native Village of Tyonek (NVT) also referred to as Tebughna (Beach People) have subsisted and thrived from the harvesting of Beluga Whales, Salmon, Hooligan, Trout, Moose, Bear, Ducks, Geese, Berries, Medicinal and Edible plants as traditional and customary practices for our past, present and future survival; and

WHEREAS, PacRim Coal, a Delaware corporation, is actively seeking state and federal permits to operate the Chuitna coal strip mine, in and around the Native Village of Tyonek and Ch'u'itnu Archeological District, and within critical fish and game habitats that support NVT's historical and present lifestyle, and

WHEREAS, the PacRim Coal Company continues to move forward with permitting applications, despite the fact that 98% of NVT residents oppose coal strip mining in the Chuitna Watershed and Ch'u'itnu Archeological District, and

WHEREAS, the Native Village of Tyonek – IRA Council is a sovereign American Indian tribe entitled to government-to-government relations and meaningful consultation with the United States of American and all federal agencies thereof, and

WHEREAS, the Native Village of Tyonek – IRA Council currently has a signed MOU with the U.S. EPA Region 10 and positive government-to-government and meaningful consultation continues between the U.S. EPA and NVT.

NOW, THEREFORE BE IT RESOLVED, the Native Village of Tyonek – IRA Council:

- I. Recognizes and appreciates the United States Environmental Protection Agency for:
 - (a) engaging in ongoing government-to-government consultation with NVT since 2005.
 - (b) demonstrating a true commitment to uphold the Clean Water and Clean Air Acts

Admin Offices	Tribal Operations	Environmental	ICHD Admin	Kaloa Properties	Little Chief HS	NVT Housing De
Ph: 907-583-2201	Ph: 907-583-2115	Ph: 907-583-2135	Ph: 907-583-2225	Ph: 907-277-7231	Ph: 907-583-2213	Ph: 907-583-2188
Fax: 907-583-2442	Fax: 907-583-2442	Fax: 907-583-2442	Fax: 907-583-2226	Fax: 907-277-7309	Fax: 907-583-2214	Fax: 907-583-2188

- (c) offering Technical Assistance to the NVT throughout the NEPA process of the proposed Chuitna Coal mine
- (d) maintaining open channels of communication between staff and leadership of the U.S. EPA and the NVT.

NOW THEREFORE BE IT FINALLY RESOLVED, that the Native Village of Tyonek – IRA Council does hereby express its sincere gratitude to the U.S. EPA Region 10 and Headquarters leadership for consulting in good faith with the Native Village of Tyonek – IRA Council throughout the entire permitting process of the proposed Chuitna Coal Strip Mine, in-order to mitigate any adverse effects on tribal cultural and spiritual values and interests within the Chuitna River Watershed and the Ch'u'itnu Archeological District, that maybe caused by the proposed mine,

CERTIFICATION

This will certify that the foregoing resolution was approved at a meeting held on the 1 day, of March, 2013. At which quorum of Council members were in attendance.

For	<u>5</u>
Against	<u>0</u>
Present	<u>6</u>
Absent	<u>3</u>


Frank Standifer, III President


Rae J. Baretels, Secretary /Treasurer